consisting of chamomile, rose, orange, tuberose, sandalwood, lavender, cedarwood, bergamot, and benzoin resin, and wherein the personal care composition is capable of reducing the cortisol level in a mammal by about 0.1 to about 75% and/or increasing the sIgA level in the human by about 10% to about 150%.

14. A personal care composition comprising an effective amount of a sensory fragrance, wherein said sensory fragrance comprises one or more members of the group consisting of chamomile, rose, orange, tuberose, sandalwood, lavender, cedarwood, bergamot, and benzoin resin, and wherein the sensory fragrance is comprised of, based upon the total weight of the sensory fragrance, from about 3% to about 7% of essential oils and from about 93% to about 97% of an odoriferous portion containing benzenoid materials, alcohol materials, ester materials, aldehyde materials, ketone materials and mixtures thereof.

REMARKS

Reconsideration of the captioned application as amended herewith is respectfully requested.

The Office Action found that the information disclosure statement failed to comply with 37 CFR §1.98(a)(2); required affirmation to prosecute the invention of Group V; rejected claims 10 and 11 under 35 USC §102(e) as being anticipated under United States Patent No. 5,891,427 to Mettler ("Mettler"); and rejected claims 12 – 15 under 35 USC §103(a) as being unpatentable over United States Patent No. 6,244,265 to Cronk, et al. ("Cronk"). Claims 10 - 15 remain pending in this application after entry of this amendment.

Amendments to the Claims

Claim 12 was deleted, and the language of claim 12 was included into claim 13 and claim 14, respectively, which were dependent upon claim 12. Applicants respectfully submit that these amendments neither narrowed the scope of claim 13 or claim 14, respectively, nor were related to the patentability thereof.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned **"Version with markings to show changes made."**

Information Disclosure Statement Complied With 37 CFR §1.98(a)(2)

According to the Office Action, the information disclosure statement filed 11 April 2001 ("IDS") failed to comply with 37 CFR §1.98(a)(2), which requires a legible copy of each US and foreign patent. As shown by Applicants' postcard, a copy of which is attached herewith, Applicants included copies of the 65 cited references with the IDS. If the copies of these references have not been located by the Examiner upon receipt of this Amendment, Applicants respectfully request the Examiner to contact the undersigned so that a second set of copies of such references may promptly be hand delivered to the Examiner.

Affirmation to Prosecution of the invention of Group V (Claims 10 – 15)

Applicants affirm the provisional election to prosecute the invention of Group V (claims 10 – 15), without prejudice. Applicants restate their traversal that the invention described in Groups I to IV are so related to the invention described in claims 10 - 15 (Group V) such that only one invention is described by the invention described in claims 1 - 15. Therefore, Applicants respectfully submit that the invention described in claims 1 – 15 may best be examinable in one application without undue burden.

Claims 1 – 9, which were directed to a non-elected invention, have been deleted.

The Rejection of Claims 10 and 11 Under 35 U.S.C. §103(e) Over Mettler Has Been Overcome

Claims 10 and 11 stand rejected under 35 U.S.C. §102(e) as being anticipated by Mettler. Applicants respectfully disagree for the reasons that follow.

Mettler discloses an air freshner and room deodorizer that may contain "[a]ny fragrance oil such as wood, such as pine scent, orange..." See Mettler, column 3, lines 33 – 45 (emphasis added). These oils are used in an amount of "0.75% to 2.5% by weight of the composition." See Id., at lines 42 – 44.

By contrast, claim 10 is directed to an "effective amount of a sensory fragrance" As set forth in the Specification, the "term 'effective amount' refers to the percentage by weight of the sensory fragrance... which is needed to create the desired response in a mammal.... Examples of desired responses include improved sleep, increased calmness, increased relaxation, and increased smiling. Preferably the effective amount is less than about 30 %." Specification, page 4, lines 3 – 10.

Mettler fails to disclose or suggest with any specificity the use of a particular type of fragrance, let alone the use of a "sensory fragrance" capable of creating any of the above desired responses. In fact, Mettler neither discloses nor suggests: 1) the creation of any of the above desired responses, whether through the use of a sensory fragrance or otherwise; or 2) the "effective amount" of such a sensory fragrance necessary to achieve such responses. Rather, Mettler teaches the incorporation of any fragrance oils for a completely different purpose, i.e., as a carrier for the delivery of vitamins to the occupants of a room. See Mettler, Column 1, lines 10 – 12. Moreover, Mettler fails to disclose or suggest the claimed personal care composition "capable of reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%" as claimed in claim 10.

Rejections under 35 USC §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 198 USPQ 344 (CCPA 1978). In other words, to constitute an anticipation, all material elements recited in a claim must be found in one unit of prior art. Id. The exclusion of a claimed element from a prior art reference is enough to negate anticipation under 35 USC §102 by that reference. Atlas Powder Co. v. E.I. Du Pont de Nemours & Co., 224 USPQ 409 (Fed. Cir. 1984).

Therefore, because Mettler neither discloses nor suggests several elements claimed in claim 10, i.e., e.g., the "effective amount" of a "sensory fragrance", wherein the composition is capable of "of reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%," Applicants respectfully submit that the rejection of claim 10 under 35 USC §102(e) over Mettler has been overcome and should be withdrawn.

For similar reasons, Applicants respectfully submit that the rejection of claim 11, which is dependent upon claim 10 and includes all of its limitations therein, under 35 USC §102(e) over Mettler has also been overcome and should be withdrawn.

The Rejection of Claims 12 - 15 under
35 USC §103(a) Over Cronk Has Been Overcome

Claims 12 - 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cronk. Applicants respectfully disagree for the reasons that follow.

According to the Office Action, "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made through routine experimentation to determine the preferred concentrations of the fragrance to achieve the desired effect." However, such a statement overlooks the second sentence of 35 USC §103. Rather, the issue is whether such experimentation is within the teachings of the prior art. See In re Waymouth, 182 USPQ 290 (CCPA 19740. Applicants respectfully submit that obviousness does not, and cannot exist if the prior art neither indicates which of the disclosed parameters are critical nor provides any direction as to which of many choices is likely to be successful. See Merck & Co., Inc. v. Biocraft Labs., Inc., 10 USPQ.2d 1843 (Fed. Cir. 1989).

Cronk is directed to nasal strips and dilators that contain aromatic substances, such as any of the fragrances listed in Cronk on Column 9, line 35 to column 11, line 29. Cronk fails to disclose or suggest: 1) the use of a "sensory fragrance" capable of creating any of the above desired responses; 2) the use of particular components in a "sensory fragrance" that would be capable of creating any of the above desired responses; 3) the amount of such particular components in a "sensory fragrance" that would be capable of creating any of the above desired responses; 4) the creation of any of the above desired responses, whether through the use of a sensory fragrance or otherwise; 5) the "effective amount" of such a sensory fragrance necessary to achieve such responses; and 6) the claimed personal care composition "capable of reducing the cortisol level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%".

More specifically, Cronk neither discloses nor suggests the particular amounts of essential oils and odoriferous portion necessary to achieve such a sIgA concentration increase and or cortisol decrease as claimed in claim 14. Cronk also fails to disclose or suggest the claimed benzenoid materials, aldehyde materials, ester materials, ketone materials, citronellol, alcohol C-8, alcohol C-10, alcohol C-11, alcohol c12, linalool, geranoil, benzyl alcohol, 2-ethyl-4-(2,2,3-trimethyl-3-cyclopentene-1-yl)-2-buten-l-ol, dihydromyrcenol, as claimed in claim 15.

Because the prior art fails to indicate which parameters and components are critical and fails to provide any direction as to which of many possible choices is likely to be successful to create, for example, the "sensory fragrances" or a composition capable of "reducing the cortisol

level of the mammal by about 0.1 to about 75% and/or increasing the sIgA level of the mammal by about 10% to about 150%," then Applicants respectfully submit that the fact that the claimed combination may fall within the scope of possible combinations allegedly taught by the prior art does not render the claimed combination unpatentably obvious. See In re O'Farrell, 7 USPQ 1673 (Fed. Cir. 1988).

Moreover, the Office Action provided that the obvious rejection of claims 12 – 15 may be overcome with a clear showing of an "unexpected result attributable to the specific concentrations of fragrances as employed by applicant in the instant invention." Applicants respectfully submit that such unexpected results are demonstrated in the Examples provided in the Specification.

Claim 13 is directed to a particular personal care composition "capable of reducing the cortisol level in a mammal by about 0.1 to about 75% and/or increasing the sIgA level in the human by about 10% to about 150%." For example, as shown in Example 3 of the Specification, the group who bathed with composition A (which contained the sensory fragrance as more specifically set forth in claims 14 and 15) reported a significantly greater drop in cortisol level than those who bathed with composition B (which did not contain the sensory fragrance). In addition, for example, Examples 10 and 11 demonstrated that the average sIgA increase for those who inhaled a composition containing the sensory fragrance increased by about 47%, whereas the average sIgA increase for those who inhaled the unfragranced materials was only about 2%. In addition, as set forth in Example 13, the panelists who participated in the studies of Example 10 (sensory fragrance), Example 11 (no sensory fragrance), Example 12 (no sensory fragrance in bath), and Example 13 (sensory fragrance in bath), also responded via a questionnaire as to how they felt after completion of their respective study. As shown in Table XI, those "panelists who inhaled the sensory fragrances (either with or without a bath) felt better and had a more positive experience than those panelists who did not inhale the sensory fragrance." Clearly, these examples further demonstrate that the sensory fragrances of the present invention are effective in increasing sIgA concentrations and/or in reducing cortisol and unexpectedly provide users with a more positive experience, e.g. feeling of relaxation and less stress.

Therefore, in view of the unexpected results provided in the Specification as well as the failure of the prior art to provide any parameters for locating several of the claimed elements such as, for example, "effective amount, "sensory fragrance," and the claimed personal care composition "capable of reducing the cortisol level in a mammal by about 0.1 to about 75%

and/or increasing the sIgA level in the human by about 10% to about 150%," as well as the particular components of the sensory fragrance and the amounts thereof as set forth more specifically in claims 14 and 15, Applicants respectfully submit that the rejection of claims 12 – 15 under 35 U.S.C. §103(a) as being unpatentable over Cronk has been overcome and should be withdrawn.

Conclusion

It is submitted that the foregoing amendments and remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

Respectfully submitted,

By: _____
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Please cancel claims 1 – 9 and 12.

Please amend the claims as follows:

13. (Amended) [The] A personal care composition [of claim 12,] comprising an effective amount of a sensory fragrance, wherein said sensory fragrance comprises one or more members of the group consisting of chamomile, rose, orange, tuberose, sandalwood, lavender, cedarwood, bergamot, and benzoin resin, and wherein the personal care composition is capable of reducing the cortisol level in a mammal by about 0.1 to about 75% and/or increasing the sIgA level in the human by about 10% to about 150%.

14. (Amended) [The] A personal care composition [of claim 12,] comprising an effective amount of a sensory fragrance, wherein said sensory fragrance comprises one or more members of the group consisting of chamomile, rose, orange, tuberose, sandalwood, lavender, cedarwood, bergamot, and benzoin resin, and wherein the sensory fragrance is comprised of, based upon the total weight of the sensory fragrance, from about 3% to about 7% of essential oils and from about 93% to about 97% of an odoriferous portion containing benzenoid materials, alcohol materials, ester materials, aldehyde materials, ketone materials and mixtures thereof.